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Attorneys for Defendants

KIM EMBRY & ENVIRONMENTAL HEALTH ADVOCATES, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

vs.

KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
California,

Defendant.

Case No.: 2:20-cv-00526-KJM-DB

**DECLARATION OF CRAIG NICHOLAS
IN SUPPORT OF DEFENDANTS KIM
EMBRY AND ENVIRONMENTAL
HEALTH ADVOCATES, INC.'S MOTION
FOR SUMMARY JUDGEMENT**

Hearing Date: August 23, 2024

Hearing Time: 10:00 a.m.

Location: 3 (15th floor)

Judge: Hon. Kimberly J. Mueller

Magistrate: Hon. Deborah Barnes

Complaint Filed: March 6, 2020

Trial Date: None Set

1 I, Craig Nicholas, declare:

2 1. I am an attorney at law duly licensed to practice before all the courts of the State of
3 California, including this Court. I make this declaration in support of Defendants Kim Embry
4 (“Embry”) and Environmental Health Advocates, Inc.’s (“EHA”) Motion for Summary Judgment.
5 I am familiar with the facts stated herein, and if called upon as a witness, I could testify to the
6 following facts based on my own personal knowledge.

7 2. I am the managing partner of the law firm of Nicholas & Tomasevic, LLP (“N&T”).
8 N&T has extensive experience handling complex class and representative actions, including
9 Proposition 65 citizen enforcement actions on behalf of Embry and EHA since 2017.

10 3. Embry and EHA investigate and file Proposition 65 enforcement actions on their
11 own accord without any outside influence or encouragement from the Attorney General’s Office
12 (“AGO”) or state officials.

13 4. Regarding the B&G NOV/suits at issue, Embry and EHA, through their attorneys,
14 chose, for example: (1) when and where to purchase the Cookie Cakes and Sandwich Cookies, (2)
15 which independent, third-party laboratories to send the B&G cookies to for acrylamide testing, (3)
16 which qualified expert to utilize to review the laboratory results and provide an opinion on
17 exposures in excess of the NSRL, (4) when to issue the B&G NOV/s, including the content therein,
18 and (5) when and where to sue B&G after expiration of the mandatory 60-day notice period. The
19 AGO or other state officials played no role in these decisions.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct. Executed on July 19, 2024, in San Diego, California.

22
23 By:



24 Craig Nicholas
25 Declarant/Attorney for Defendants
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